IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Abbas Ali vs. Pratap Smarak Trust, Udaipur & anr.

S.B. Civil Second Appeal No.89/1984 against the judgment and decree dated 31.3.1984 passed by the learned District Judge,Udaipur in Civil Appeal No.122/80.

Date of Judgment: March 08, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. G.Vaishnav for the appellants.
None present for the respondents despite service.

BY THE COURT:

The only question involved in this second appeal is that whether document Ex.3 is a deed of lease or a deed of licence.

According to the learned counsel for the appellant a bare reading of Ex.3 clearly proves beyond doubt that by this deed, a immovable property was let out to the defendant-appellant by the landlord-Trust on payment of rent of Rs.375/- per month. He also has been given permission to put on an stall over the land and to do the business of the photography and allowed to keep books, coloured view cards and film-rolls and sale them. The specific word “tenancy” has been used in Ex.3.

The exclusive possession was given to the defendant-appellant. The terms which normally are incorporated in the lease, they have been incorporated in Ex.3 dated 16.6.1972. In view of the above, the appellant is tenant and not the licensee as claimed by the plaintiffs. The two courts below treating the appellant-tenant licensee, decreed the suit of the plaintiffs for eviction of the appellant-tenant by the impugned judgment and decree dated 6.10.1980 and that was upheld by the first appellate court by judgment and decree dated 31.3.1984.

No body appeared on behalf of the respondents despite service.

I considered the submissions of the learned counsel for the appellant and perused the record and specifically the deed Ex.3 dated 16.6.1972. In the said deed Ex.3, in the beginning it is stated that the property is being given on licence to the defendant by the respondent-plaintiff-Trust. The description of the entire property of the plaintiff-Trust is given separately which appears to be some big and enclosed property out of which a small piece of land measuring only 8' x 10' has been given by this deed to the defendant for specific purpose of keeping the goods relating to photography, books, coloured view cards and film-rolls and he was given permission to sell those items from the stall. It is provided in the licence that the defendant shall put his stall over the said piece of land and will take away that temporary structure when he will vacate the suit premises. As per condition no.5, no other

photographer will be permitted to take photographs within defendant-Trust's property who may come with the tourists. However, it is provided in the deed Ex.3 that the tourists may bring their own camera and may take phorographs. It is also provided in condition no.5 that no other person will be allowed to do the same business which will be done by the defendant and it is mentioned in the deed Ex.3 that the total period of permission given to be defendant is upto 1.7.1972. After expiry of term, the respondent-Trust invited tender for giving the contract of photography by publication of the notice in the news-paper on 19.6.1975. It was provided in the said notice that the contract will be given by auction. The plaintiff challenged that action on the ground that the plaintiff is tenant. The two courts below after interpreting the said deed Ex.3 held that even though there is mention of the word “tenancy” in Ex.3 at number of places, still looking to the nature of the contract between the parties and the business which was allowed to the defendant and total area of the property let out to the defendant, out of the big chunk of the property of the plaintiff, giving plaintiff right to keep the entire property including the property in dispute in lock and key of the plaintiff. This is a licence and not the lease in favour of the defendant-appellant.

The learned counsel for the appellant tried to submit that the word “tenancy” has been used in the deed is also in consonance with

the nature of the business and exclusive right has been given to the appellant-tenant to run his business. It is immaterial whether the let out property is big or small. It is not material whether the landlord provides structure over the land or the tenant is permitted to put his structure over the land. The tenancy can be created for the land with a right to even raise construction. In this case, the appellant-tenant paid rent at the rate of Rs.375/- per month and, therefore, he is tenant.

The facts mentioned in detail above, clearly disclose that the respondent-Trust is Trust having its big property which appears to be tourist-spot where tourists used to visit and the appellant-tenant was given exclusive right to take photographs of tourists persons. The condition of this nature cannot be ignored to find out the exact intention of the parties while entering into agreement Ex.3. The another condition put in the deed is that no other person will be allowed by the respondent-Trust to take photographs of the tourists in the property of the plaintiff. The exclusive right could have been given and the tenancy could have been created by the landlord but looking to the entire deed, it appears that by the deed Ex.3, the appellant-tenant was given licence to put his temporary structure and he was permitted to take photographs of the tourists with permission of the tourists but he had not been given right to keep the possession of the suit property beyond the period which is open for visitors and tourists. This is not in dispute

that the appellant-tenant had to surrender the possession to the landlord as he was not allowed to keep the possession after the working period of that tourist-spot.

In view of the above, the two courts below rightly held that by deed Ex.3 lease has not been created but it is a case of giving licence and consequently rightly dismissed the suit of the plaintiff.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(PRAKASH TATIA),J.

mlt.